695 tomb and force him to drink water in which earth from the grave had been diluted. This test was greatly feared, for the Mossi believe that the deceased will come and take his revenge.

The defendant went free unless his guilt was proved by witnesses. When arguments arose about the ownership of fields, domestic animals, etc., each person concerned would give his arguments and summon his witnesses, and the judges made a decision on the basis of the discussions. If two women quarreled, their husbands were supposed to get together and reach a decision. The province chief judged disputes
692 concerning marriage. For instance, if a girl had been promised to someone and the bride price was paid in part, and then her father changed his mind and gave her to another, the disappointed suitor could appeal to the province chief, who saw to it that the payment was returned. If the defendant ran away to avoid trial, he could only be tied in absentia if witnesses deposed against him.

696 /25/ The sentence was carried out as far as possible, even in the
691 absence of the convicted party; if he returned, the trial was not re-
672 opened but he could appeal to the province chief. The family is held responsible in every case. If the sentence includes a fine, and if the convicted person's property is insufficient, the property of his relatives is seized. People are held accountable for their children's debts, and if the defendant runs away, one of his relatives is seized in his place. On the other hand, the head of the family is the abso-
[593] lute master and the judge of the family. He must pay his children's debts and the fines they have incurred, but he may chastise them, even put them to death, or banish and curse them, a punishment which as a rule is greatly feared. All this indicates the strength of the family ties, which we shall study in the second part of this work. The naba saw to the execution of the sentence pronounced by the court; the executive and judicial powers were vested in the same person. If anyone refused to pay his debts or to pay the inflicted penalty, he was stripped of his property. No commutation of the sentence was allowed, and the person condemned to irons or to death had to suffer the sentence himself and could not go free by paying a fine or by substituting a slave. Capital punishment was carried out in public. The province chief was entitled to grant a pardon, but,
[761] of course, he made use of this right quite rarely. A man's life counts for so little in the eyes of the Black!

695 The procedure was the same for all, men and women. The sons
681 of nabas, the nakomsé, however, were neither tried nor punished in
554 public. They were not tied with ropes, but with strips of fabric; and if condemned to death, they were hanged rather than clubbed to death. In any case, complaints against them were extremely rare. The sons of a powerful naba could do anything with impunity.

681 For examples, here are a few crimes and their respective punishments. Of course, there was no written code, no formal scale of penalties. Everything depended on custom and on the whim of the judge. Thus, the wealthy could obtain sentences in their favor by
696 paying the judges, and thieves could avoid punishment by sharing
691 their loot with the naba. Otherwise, a thief caught in the act was
685 flogged, sometimes to death. He was condemned to several months in irons, and exposed to public ridicule before the naba's hut; he had to restore what he had taken, and his family was held responsible. If he repeated the offense, he was led to the marketplace with a rope around his neck; he was supplied with an abundance of meat and dolo /beer/, and then clubbed to death at the foot of a tree. In Ouagadougou he was sometimes made a eunuch instead. This was almost the equivalent of a death sentence, because the operation was carried out in such barbarous fashion that death often ensued. French justice more leniently imprisons the thieves, a cause of complaint by honest people who find the punishment too mild.

682 In case of willful murder, the killer was put to death; if he could
683 not be found, a member of his family was executed in his place.
672 In case of a brawl, no attempt was made to determine who had started the fight or who was in the right. (Manslaughter was punished by a fine paid to the victim's family. The right /26/ of self-defense was, of course, recognized. If blows and wounds had been inflicted, the adversaries were put in irons.)

681 Old women were often accused of being witches and of eating
683 children's souls. If their crime was considered proved, if the sorcerers
888 consulted declared some old woman guilty of a baby's death, she was put to death in very cruel fashion: a second opening was made in a clay pot so that her head could be put completely within it; then the pot was heated intensely and placed over the head of the unfortunate woman.

685 If a goat or sheep caused damage to a field, the animal could be killed on the spot. The owner had to be notified, but he was not

between the lineages concerned. If either the repudiated woman or a member of her husband's lineage wished to initiate a reconciliation, she or he had to summon a yagenga. He alone was permitted to reconcile the couple after the pots had been placed in the courtyard. When a woman felt that she was being maltreated by her husband, she usually fled to her own patrilineage and waited for her husband's patrilineage—usually his brothers—to visit her male relatives and discuss the case. If the woman was judged guilty, she was reprimanded and sometimes flogged by her own relatives for causing trouble between the two lineages, and then sent home to her husband. However, if the man was found guilty, his wife was returned to him, but he was warned that he would forfeit all rights to her if he maltreated her again. A man who lost his wife through repeated maltreatment could not take the matter to court, because chiefs usually refused to deal with purely domestic issues. His only recourse was to induce one of his lineage brothers to recall a daughter who had married into his wife's lineage. This act was usually sufficient to bring about the reconciliation of the estranged couple before innocent persons were hurt.

The Mossi made every effort to solve minor problems without recourse to the chiefs. The local Boodkasemdamba and lineage elders adjudicated quarrels and simple offenses involving members of minimal segments in the various village saghse. They even tried to resolve difficulties between lineage members of larger segments who lived in different villages. The elders often imposed punishments such as reprimands, floggings, and even banishment. The convicted person did not usually appeal to the chief, because he knew that the chief would advise him to settle his problem within the family.

Unrelated villagers also tried to settle difficulties among themselves without appealing to the chief. For example, a man who was caught stealing could be beaten or even killed by his intended victims, and the chief did not punish them for their action. In many cases, villagers simply took the thief back to his relatives, knowing they would punish him. Occasionally, a family disgraced by a thieving member forced him to kill himself. When this happened the chief held an inquest but took no other action.

The Mossi gave a fairly simple explanation for returning a thief to his relatives for punishment. They said that every family had "weak" members, and that by not harming the captured thief they were only protecting themselves against retaliation if one of their own relatives should commit a similar crime. But a more important reason seems to have been their fear of starting a feud that might result in the premeditated murder of a man and the subsequent execution of his murderer.

The one crime that invoked terrible unofficial sanctions was rape. If the

The following case, tried in a district court in 1956, illustrates the Mossi' 691 685 634

concept of justice. To reach the central market, the people of Donse village used a path that ran across the fields belonging to two of their fellow villagers, Zami and Isa. The path was normally open all year round, even during the planting season, because neither man wished to inconvenience the villagers. But one day the two men quarreled, and shortly thereafter Isa announced his decision to close his path during the planting season. He said he feared that "people would steal his growing crops" if he left it open. Moreover, he wanted to use the path to increase his planting area. Zami objected to what he considered an insult, and, believing that Isa had violated a customary rule, used the path. In doing so, he crushed several stalks of millet. Isa witnessed his action, and the men came to blows. When the village chief proved unable to reconcile them, they were brought before the district court.

The district chief ruled that according to Mossi custom, a man could close a path during the planting season to prevent people from stealing his crops. But if he closed a path, he had to provide an alternative route, for no one had the right to restrict the movements of others. The chief sympathized with Isa over the small size of his field, but insisted that he provide a path across or around it. However, he persuaded Zami to let Isa use a portion of his land in compensation for the new path. 695 691 685 634

The chief tried to reconcile the interests of Isa and Zami with those of the entire village. He apparently felt that reconciliation was more useful than judgment. He did uphold the law that the right of passage is mandatory, but also maintained that a man has the right to protect his property from potential thieves. At the same time, he made it clear that although a man may defend his own rights, he may not do so by infringing upon the rights of others.

The same principles seem to have been upheld in the following case, also recorded in 1956, which is interesting because it illustrates the flexibility of Mossi law. A man named Hammadou died, leaving fifteen cows as his legacy. Moussa, his eldest son and principal heir, distributed the cows among his father's other sons and male relatives, but did not give any to his father's daughter. Strictly speaking, he was right to exclude her, because a woman was not supposed to inherit any of her father's property unless he had no living lineal or collateral relatives. In practice, however, a daughter always received part of her father's legacy, especially if he had been wealthy. Hammadou's daughter therefore felt slighted, and when she received no redress from Moussa or her other male relatives, she had the case taken to the village chief. He could not resolve it, and referred it to the district chief. 691 428 [562] [692]

When Moussa was called before the district chief, he explained that his [634]

father had given the woman a silver bracelet before he died, and that the babissi felt that this was sufficient, since she had a husband to provide for her. Furthermore, Moussa said that the inheritance had already been distributed, and that any redistribution would impose a hardship on all concerned.

Interpreting the inheritance law according to common practice, the chief ruled that the milk from a man's cattle was for *all* his children, regardless of sex, and that the fact that the father had formerly given the daughter a bracelet should not have influenced the distribution of the inheritance. The chief stated that the woman should receive at least one cow, and that if the defendant did not agree, he (the chief) would recall all the animals and supervise their distribution. He did not feel that he had to state the principles by which he had reached his judgment, for the consensus among the people of the district was that the heir was trying to take advantage of the law for his own selfish interests. Rather than appeal to Ouagadougou, Moussa and his babissi accepted the verdict.

On the basis of these and other cases, we are led to the conclusion that the Mossi felt that law and the judicial process should serve to reconcile people and to maintain what was commonly considered to be social justice.

Most of the cases at the district court were tried in the same manner as those cited above. Cases involving relations between men and women were the most common. This is paradoxical, because the district chief tried to avoid any involvement with such cases. For every domestic case tried by the district chief, five others were sent back to the village or lineage level. Even so, it is estimated that about 80 per cent of the cases tried by Mossi district chiefs ultimately concerned women. The most common case of this type was the alleged refusal of a woman to return to her husband.[6] If the judge found that another man had encouraged her to leave her husband, he ordered her to return to him and warned her and the man about the possibility of serious difficulty with her husband's relatives. On the other hand, if the chief found that the woman had left a cruel husband who threatened to harm her or her relatives, he warned the husband not to carry out his threats. The Mossi had no bride price; thus, a woman's family was not faced with the problem of restitution. Sometimes, an angry husband did demand that his wife's family return the gifts (*pogopossum*, "thanks for the woman") he had given them from time to time—e.g., at funerals—and they complied.

Adultery cases were next in frequency at the district court. A man convicted of adultery with another man's wife was either warned to leave her alone or fined a sheep or a goat. He was also liable to be put in stocks for